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1. Purpose and Scope. This chapter discusses the Claims Examiner's function in developing claims for consequential injuries. It also provides examples of the types of consequential injuries which may result from illnesses covered under EEOICPA.

2. Defining a Consequential Injury. A consequential injury covered by EEOICPA is an injury or illness that has occurred as a result of, or was caused by the occupational illness covered under EEOICPA, unless the consequential injury is shown to be the result of an independent intervening incident caused or attributed to the employee's own intentional conduct. Therefore, any injury or illness shown by medical evidence to be a consequence of a covered beryllium disease, silicosis, or covered cancer is covered for medical benefits.

3. Consequential Injuries of Metastasized Cancer. Usually, the claimant will notify the CE of a potential consequential injury. The CE is responsible for investigating any instance of consequential injury.

a. Assessing and Developing Medical Evidence in Metastasized Cancer Injuries. Where there is a predictable consequential injury of the accepted condition (i.e., secondary cancer has metastasized from the primary site), the CE may accept the consequential injury claim without an extensive investigation. This type of injury will be accepted as a consequential injury if the claimant provides medical evidence that:

(1) establishes the diagnosis for the secondary cancer; and

(2) establishes the date of diagnosis for the secondary cancer.

The date of diagnosis for the secondary cancer will be: a) subsequent to the date of diagnosis for the primary cancer; b) at the same time the primary cancer is diagnosed; or c) before the date of diagnosis for the primary cancer if the primary site is not obvious.

3. Consequential Injuries of Metastasized Cancer. (Continued)

If the medical evidence is inconclusive and the CE is unable to determine whether the condition is a metastasis, the CE could seek clarification from the treating physician and/or ask the District Medical Consultant to review the case file and provide an opinion.

b. Examples of Metastasized Cancer Injuries. It is widely accepted amongst cancer specialists in the medical field that certain carcinomas and sarcomas metastasize from the primary site or lesion to a secondary site or lesion in a predictable pattern. For example,

(1) Carcinomas of the lung, breast, kidney, thyroid, and prostate tend to metastasize to lungs, bone, and brain early during their course.

(2) Carcinomas of the GI tract, reproductive system, and abdomen tend to metastasize to the abdominal lymph nodes, liver, and lungs. Later in their course, they can metastasize to the brain and other organs.

(3) Sarcomas often first metastasize to the lungs and the brain.

(4) Primary malignant tumors of the brain seldom metastasize to other organs, but they can spread to the spinal cord.

4. Consequential Injuries Other Than Metastasized Cancer. The CE is responsible for investigating other types of consequential injury.

a. Assessing and Developing Evidence for Other Types of Consequential Injuries. Where a claim is made for a consequential injury of the accepted condition other than for a predictable patterned metastasized cancer, the CE is responsible for investigating the consequential injury based on the requirements set forth at Sections 30.214 and 30.205 of the EEOICPA regulations. The CE must obtain from the claimant:

4. Consequential Injuries Other Than Metastasized Cancer.
(Continued)

(1) A Personal Statement that describes the consequential problem and the circumstances that relate it to the accepted condition. The claimant's belief alone that the consequential injury is the result of the accepted condition is insufficient to establish either the existence of the accepted condition or the causal relationship between the consequential injury and the accepted condition.

(2) Medical Evidence which establishes a causal connection between the claimed consequential injury and the accepted condition. The physician must provide the employee's medical history; the diagnostic/physical findings which include supporting documentation such as pathology reports; and a diagnosis. The physician must also discuss the causal relationship between the consequential condition and the accepted condition. The mere fact that an illness arises subsequent to the acceptance of a medical condition is insufficient to establish a causal relationship.

b. Assessing the Medical Evidence. The CE must use reasonable judgement when assessing the medical evidence required for a claim of consequential injury. In some instances, the CE may accept consequential conditions upon receipt of the medical evidence described above at paragraph 4.a.(2). In other situations where the relationship is questionable, more medical evidence (i.e., DMC review, clarification from treating physician, or second opinion) may be required.

c. Examples of Common Consequential Injuries Resulting from Medical Treatment for Accepted Conditions. As part of a patient's medical treatment or protocol, a patient may undergo treatment and/or other drug therapy which will produce side effects that can be considered common consequential injuries. Examples of such injuries are:

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- (1) Extreme fatigue and anemia;
 - (2) Gastrointestinal conditions such as nausea, vomiting, constipation, diarrhea, weight loss;
 - (3) Radiation pneumonitis;
 - (4) Skin rashes and radiation burns as a result of radiation treatment;
 - (5) Known side effects from prescribed medications including osteoporosis as a result of steroid treatment which causes weakening of the bones and injuries such as spontaneous hip fractures;
 - (6) Chronic pain;
 - (7) Pneumonia and pulmonary collapse as a result of lungs weakened by a covered beryllium disease;
 - (8) Psychological conditions, including clinical depression as a result of chronic pain and/or limitations, may result from a covered cancer or covered beryllium disease.

d. Injury Resulting from Travel. If an employee is seeking medical treatment for an accepted condition and sustains a new injury while traveling to obtain medical care, the new injury can be accepted as a consequential injury. The CE obtains the following factual and medical evidence.

- (1) A Personal Statement that describes the consequential problem and the circumstances that relate it to the accepted condition.
- (2) Medical Evidence which include a diagnosis and the diagnostic/physical findings which explain how the diagnosis was established.

5. Accepting or Denying the Consequential Injury. The CE is responsible for taking the appropriate steps in developing any claimed consequential injury. This includes notifying the claimant of any deficiencies in the evidence and allowing him or her an opportunity to respond and submit additional evidence.

a. If the primary covered condition has been accepted, the claimant can be notified by letter if the consequential injury will be accepted. However, if the decision is to deny the consequential injury, the CE is to advise the claimant of his/her determination by issuing a recommended decision.

b. When the case is in posture for the CE to accept a primary covered condition and a potential consequential injury exists, the CE will proceed with the immediate release of a recommended decision for the primary condition. A recommended decision accepting a primary covered condition should not be delayed while developing a consequential injury; however, if the case is in posture to also accept the secondary cancer, this acceptance is to be included in the recommended decision. While the case file is at the FAB, the FAB CE pursues all development regarding consequential injuries. A letter accepting a consequential injury or a recommended decision denying a consequential injury cannot be issued until FAB issues a final decision on the primary covered condition. Once the case file is returned to the DO, the DO CE can continue development on the consequential injury and/or issue the letter accepting the consequential injury or the recommended decision denying it.

6. ECMS Coding. Status effective date is the date of first manifestation of the consequential injury.